

SWBT's unsupported assertion that it has below-cost services (Brief, p. 86) should be ignored, together with all its accompanying dire predictions. Resale is mandated by the Act as a key to initial competitive entry and should not undercut by SWBT's post-Act lobbying.

38. What use limitations should apply to SWBT's tariffed services which are resold by AT&T or MCI?

SWBT seeks to avoid its obligation under the Act "not to impose unreasonably or discriminatory conditions or limitations on the resale of telecommunications services" (Section 251(c)(4)) by arguing that the FCC prohibits restrictions on resale but not on all tariff "use limitations". (SWBT, Initial Brief p. 105). Nowhere in the Act or in the FCC Order is the term "use limitation" used or even described conceptionally as SWBT would have this Commission use it. SWBT argues that "SWBT's tariffs contain a number of use limitations which serve to define the nature of the service offered." (SWBT Initial Brief, p. 101). But in holding that resale restrictions are "presumptively unreasonable" (except for cross class selling of residential services, etc.),¹⁰ the FCC stated:

Such resale restrictions are not limited to those found in the resale agreement. They including conditions and limitations contained in the incumbent LEC's underlying tariff."

(§ 939 FCC Order (emphasis added)).

SWBT also argues that AT&T and MCI should not be permitted to resell volume discount tariff offerings such as MCA and 1 + Saver on an aggregate basis because SWBT's customers are not permitted to aggregate under its tariffs. SWBT fails to note that the FCC specifically found that an LSP may aggregate the traffic of more than one user in order to meet minimum volume requirements

¹⁰Cross-class ("means - tested") selling is the only prohibition in Section 392.475 R.S.Mo.

and further:

With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand. The Commission traditionally has not permitted such restrictions on the resale of volume discount offers.¹¹ We believe restrictions on resale of volume discounts will frequently produce anticompetitive results without sufficient justification. We, therefore, conclude that such restrictions should be considered presumptively unreasonable.

Order at para. 953. Accordingly, if SWBT wished to retain any tariff restrictions other than those specifically cited by the FCC it had the obligation to demonstrate why those restrictions are reasonable and narrowly tailored. SWBT failed to meet this obligation and thus its tariff resale restrictions masquerading as "use restrictions" must be struck down as unreasonably discriminatory.

42. What should be the other terms of interconnection?

AT&T has not withdrawn this issue. Witness Dalton testified that if AT&T and SWBT have agreed on a provision that differs from the AT&T proposed document, the agreement should control. (Tr. 1040). She also testified that the Commission should resolve all other issues, and that AT&T continued to support its document. (Tr. 1040, 1049). Similarly, MCI witness Russell testified the Commission should adopt MCI's proposed agreement. (Tr. 1108-10).¹²

As indicated in the Joint Initial Brief, MCI and AT&T do not expect the Commission to

¹¹See, e.g., *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, Report and Order, 60 FCC 2d 261, 308-16 (1976) (divisions of fulltime private line circuits will enable smaller users to make efficient, discrete use of private line offerings, and such advantages will be in terms of cost savings and selectivity rather than technical advantages).

¹²In the testimony cited by SWBT at page 113 of its Brief, Ms. Russell testified it would be reasonable for the parties to reconcile the proposed contracts to the Commission's decision. (Tr. 1098). She did not support SWBT's position.

compare the documents line-by-line. Rather, MCI and AT&T ask the Commission reasonably to conclude that the provisions of the proposed agreement which SWBT did not see fit to specifically contest should be deemed reasonable and should be adopted. To the extent issues were litigated, the Commission should require the parties to reconcile the proposed agreements to its Order herein and submit final agreements for approval by a date certain in the near future.

Conclusion

As indicated in the opening statement (Tr. 75-86), MCI - like AT&T and other LSPs - stands ready to invest even more in local systems in the State of Missouri than the tremendous amount it has invested in long distance. The Commission needs to strike down the barriers to entry which SWBT attempts to erect, and compel interconnection on terms and conditions which will encourage new investment. It is not possible to protect the historic monopoly, as SWBT desires, and at the same time deliver the benefits of competition. Just as AT&T experienced in the long distance market, SWBT will be among the winners once the Commission opens the local market to full and fair competition. The Commission should do so by adopting the interconnection agreements proposed by AT&T and MCI, subject to its decision on the issues specifically presented in this arbitration.

Respectfully Submitted,

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Certificate of Service

A true and correct copy of the foregoing was mailed this 15th day of November, 1996, to the persons listed on the attached list, by placing same in the U.S. Mail, postage paid.

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